No. 74-1331

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MICHAEL RODAK, JR.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

CITY OF PHILADELPHIA, *et al.*, *Petitioners*,

v.

GEORGE F. BAKER, *et al.*, *Respondents*.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

REPLY BRIEF

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June, 1975

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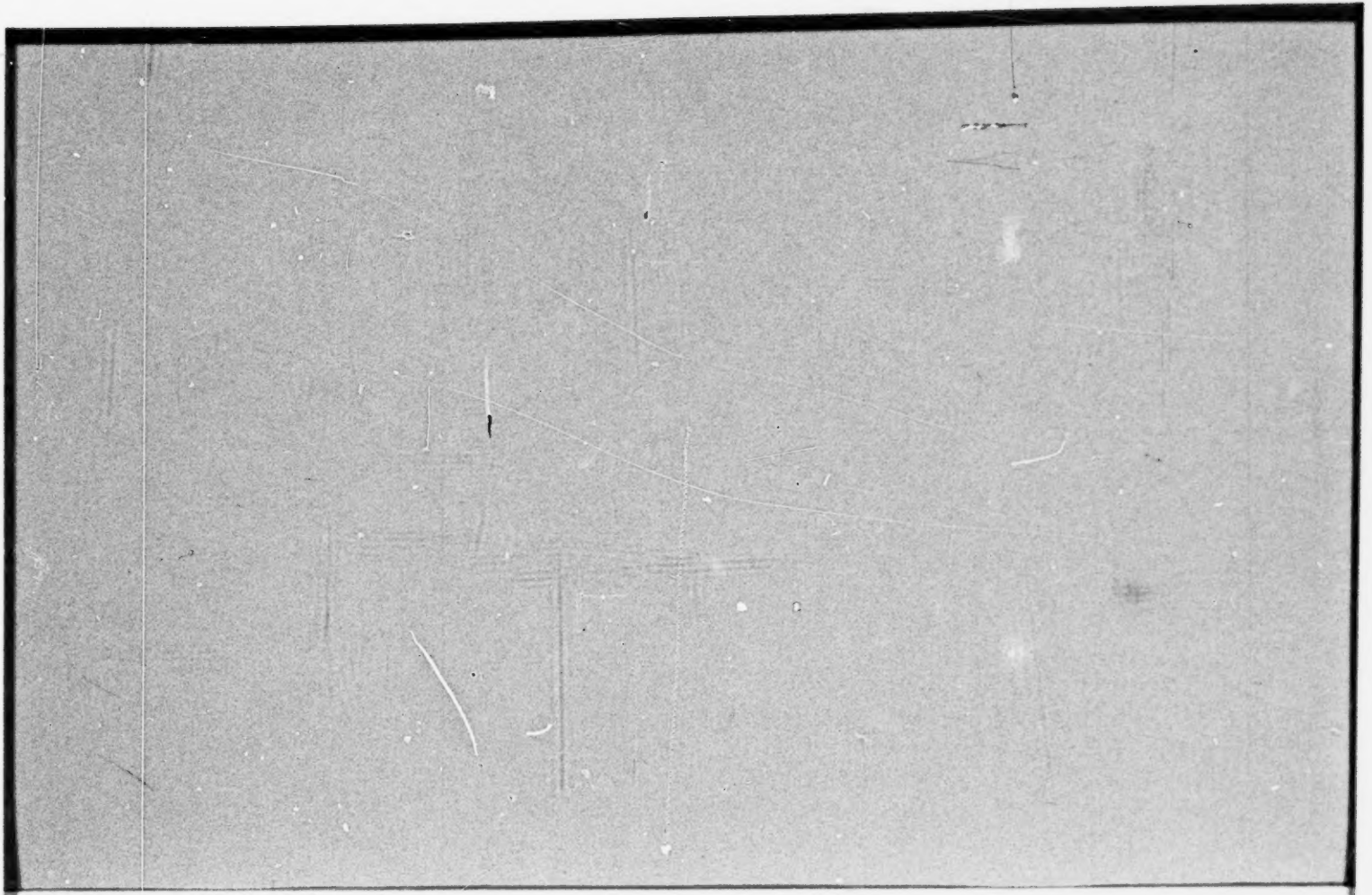

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REPLY BRIEF

Petitioners[1] make this reply in answer to matters first raised by the briefs in opposition.[2] In particular, we wish to correct the apparent misunderstanding of the Solicitor General concerning other pending proceedings, and the nature of the action below.

1. *Other Pending Cases.* Respondents infer that this case, involving 44 commuter passenger trains serving the Philadelphia, Pa. area, is the final situation involving the

[1] Commonwealth of Pennsylvania, City of Philadelphia, Pennsylvania Public Utility Commission, and United Transportation Union.

[2] United States of America, Penn Central Transportation Company, and National Railroad Passenger Corp.

1971 discontinuances by Penn Central and other railroads.[3] (USA Br., p. 5; Penn Central Br., p. 5; Amtrak Br., pp. 6-7). This is incorrect.

In actual fact, the question of the determination of, and the reviewability over, the commuter-versus-intercity character of passenger trains, is central to pending cases involving commuter train service at Washington, D.C. and at Chicago, Ill. These cases are:

A. No. 73-2015 (D.C. Cir.) *Potomac Passengers Assn. v. Baltimore & Ohio R. Co.*, reported below at 363 F. Supp. 39 (D.D.C.) and 342 I.C.C. 778.

B. No. 72 S 114 (N.D. Ind.). *City of South Bend v. United States*, reported below at 342 I.C.C. 154, 179-80.

Moreover, since the basis of the decision below was jurisdictional in nature, i.e., that the U.S. Secretary of Transportation has exclusive and non-reviewable authority to determine the intercity-commuter character of a train, attempts may be made to reopen some judgments.[4]

2. *State Cause of Action.* The U.S.A. contends that the gravamen of the action below is to challenge Amtrak's operation of the trains as in violation of the Amtrak Act. This is incorrect. Our complaint is to enjoin Penn Central's discontinuance as in violation of State law. The original complaint, attached hereto, was filed in the State court, on April 7, 1971, subsequent to Penn Central's post-

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[3] There are no discontinuances by Amtrak involved in this case.

[4] For example, the Chicago, Ill.-Clinton, Ia. trains, ruled intercity by the I.C.C., were excluded from the January, 1971 report of the U.S. Secretary of Transportation. *People of the State of Illinois v. United States*, 371 F. Supp. 1136 (N.D. Ill. 1973).

ing of its discontinuance notices on March 31, 1971. A few days thereafter, the Pennsylvania interests were enjoined from prosecuting such actions outside the Penn Central reorganization court. 329 F. Supp. 387, aff'd 446 F.2d 1109; see also: 457 F.2d 381, 387.

In view of the injunction, we thereupon filed a complaint in the federal court, specifically alleging a violation of state laws, and added thereto an allegation of jurisdiction also under the Amtrak Act.[5] This is in accordance with procedures suggested by the U.S. Court of Appeals for the D.C. Circuit in litigation involving the commuter-versus-intercity character of train service. *Potomac Passengers Assn. v. Chesapeake & Ohio R. Co.*, 475 F.2d 325, 340-44 (D.C. Cir. 1973). The claims in *Passenger Corp. v. Passengers Assn.*, 414 U.S. 453 (1974), were predicated

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[5] This complaint, filed April 28, 1971, did not pray for declaratory relief, as suggested by the Solicitor General. (U.S.A. Br., p. 6) It expanded the relief sought so as to embrace additional trains, as well as bus service.

solely upon an asserted violation of the Amtrak Act, and not State law as here.

Respectfully submitted,

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June, 1975

POOR COPY

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA, PENNSYLVANIA PUBLIC UTILITY COMMISSION, CITY OF PHILADELPHIA, and UNITED TRANSPORTATION UNION,

Plaintiffs

v.

PENN CENTRAL TRANSPORTATION COMPANY,

Defendant

: No. 277 C.D., 1971

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COMPLAINT IN EQUITY

TO THE HONORABLE PRESIDENT JUDGE AND JUDGES OF THE SAID COURT:

AND NOW, this 7th day of April, 1971, come the Commonwealth of Pennsylvania, Pennsylvania Public Utility Commission, City of Philadelphia, and United Transportation Union, by counsel, and complain as follows:

1. The defendant is Penn Central Transportation Company, a railroad with its principal office at Six Penn Center Plaza, Philadelphia, Pennsylvania, and subject to the jurisdiction of Pennsylvania Public Utility Commission under the Pennsylvania Public Utility Law, Act of May 28, 1937, P.L. 1053, 66 P.S. 1101, et seq.

2. Defendant presently operates 17 trains between Harrisburg, Pennsylvania and Philadelphia, Pennsylvania, known as the 600 Series trains and bearing the numbers 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615 and 617.

3. On March 31, 1971, defendant, by W. H. Moore, President and Chief Executive Officer of Penn Central Transportation Company, posted public notices purportedly in

accordance with the requirements of Section 401(a)(1) of the Rail Passenger Service Act of 1970, P.L. 91-518, 84 Stat. 1327, 45 U.S.C.A. §561(a)(1), announcing that it will terminate its responsibility for the operation of the aforesaid 600 Series passenger trains effective May 1, 1971, and asserting that said publication is the official notice of the Discontinuance of Service under Section 13(a) of the Interstate Commerce Act, and further asserting that the said trains "are intercity and entitled to be discontinued by virtue of Section 401(a)(1) of the Rail Passenger Service Act of 1970".

4. The aforesaid 600 Series trains are not "intercity rail passenger service" trains as defined by Section 102(5) of the Rail Passenger Service Act of 1970 but are, in fact, "commuter" or "short-haul" trains as defined by Section 102(5) of the said Rail Passenger Act of 1970 and the said 600 Series trains, accordingly, are not entitled to be discontinued under the provisions of the Rail Passenger Service Act of 1970 but are now and will continue after May 1, 1971 to be under the jurisdiction of the Pennsylvania Public Utility Commission.

5. Discontinuance of service on May 1, 1971, by the aforesaid 600 Series passenger trains as proposed and announced by defendant without the approval of the Pennsylvania Public Utility Commission first had and obtained would violate the Pennsylvania Public Utility Law.

WHEREFORE, pursuant to Section 903 of the Pennsylvania Public Utility Law, 66 P.S. §1343, as amended, Pennsylvania Public Utility Commission and the other plaintiffs named herein pray your Honorable Court to enter an order to restrain defendant from violating the Pennsylvania Public Utility Law as aforesaid and to enforce obedience thereto by preliminary injunction and after hearing by permanent injunction.

AND, they will ever pray, etc.

Respectfully submitted,

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